

Liability Considerations Pertaining to the Exercise of Eminent Domain
Prepared for the Environmental Quality Council Subcommittee on Eminent Domain
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The general rule applied to legal questions concerning the liability of easement holders states that the dominant estate or tenement is liable for damage or injury to the servient estate or tenement. In other words, the holder of the easement is liable for any damage caused to the owner of the land that the easement crosses or occupies.

There are exceptions to this general rule. Section 69-4-505, MCA, provides that an individual engaged in excavation work is liable for damages to underground facilities (e.g., electric, oil, gas, fiber optic, cablevision, etc.), if that person fails to comply with the provisions of notification found in section 69-4-503, MCA. The excavator is not liable for damages caused to underground facilities if the location and marking of the facilities are not provided within 2 business days. Even with notification having been given and the facilities having been marked, the excavator must proceed in a cautious and prudent manner.

A second exception is the willful and wanton act of an individual. Should an individual (not the easement holder) knowingly cause damage or injury to a facility contained on or within an easement, the easement holder is not liable for the damage caused to the property surrounding the easement.

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